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April 29, 2008

The Honorable Victor Marrero
United States District Court
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Federal Insurance Company a/s/o AAA Mid-Atlantic, Inc. v. American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA
Index No.: 1:07-CV 6422(VM)
SSEC&K File No.: AGMCL073
Our File No.: 06-701

Dear Judge Marrero:

We represent plaintiff Federal Insurance Company ("Federal") in the above-referenced action, and I respectfully submit this letter as a joint application to extend the discovery cut-off date from May 30, 2008 to September 30, 2008. This application will affect the other dates set forth in the Civil Case Management Plan and Scheduling Order ("CMO"), and proposed new dates are set forth herein.

Background

This is an insurance declaratory judgment action arising from an underlying personal injury action in which the then 21 year-old injured plaintiff, Douglas Cannon, sought recovery for serious burn injuries in an automobile accident. The accident occurred when a tow truck collided with Mr. Cannon's stalled vehicle, causing it to explode and burn. The tow truck was en route to a towing assignment in response to a call to the local "Triple A" club, AAAMA. Federal is the insurer of AAAMA, which was sued by Mr. Cannon. Federal contributed $26,500,000 to the settlement of the Cannon action during a jury trial that lasted more than eight weeks. Defendants are the primary and excess insurers of AAA National, which was also sued by Mr. Cannon. In the within action Federal contends that defendants are obligated to provide insurance coverage to AAAMA pursuant to an Additional Insurance Endorsement in their policies, and thus to reimburse Federal.

The parties appeared before the Court for the initial settlement conference on November 30, 2007. Thereafter, the Court "So Ordered" the CMO, a copy of which is enclosed. The CMO provides, inter alia, that all fact discovery and depositions are to be completed by May 30, 2008.

The Parties Request Additional Time

The purpose of this letter is to request that the Court issue a new CMO, extending the parties' time to conduct fact discovery and depositions; and making concomitant adjustments to the other affected dates.

To date, the parties have propounded and exchanged written discovery and have produced thousands of pages of claims and underwriting documents. Federal has produced in excess of 12,000 pages and defendants have produced approximately 1,000 pages. In addition, the parties have produced their complete defense files in the underlying action, which consist of in excess of forty boxes per party.

Five non-party subpoenas duces tecum and deposition notices have also been served. Two of the non-parties -- AAA National and its broker, Marsh USA -- have fully responded to the subpoenas and their depositions have been taken in Florida. One of the other non-parties -- CBIZ, which is AAAMA's insurance broker -- has fully produced its documents, and its deposition is scheduled to be taken on May 6, 2008 in Pennsylvania. Another non-party -- AAAMA -- has produced some of its documents and additional documents are expected shortly. AAAMA's deposition is scheduled for May 16, 2008, also in Pennsylvania. We were awaiting documents from the tow truck operator, E & D Towing, but have now been advised to expect a motion to quash. The non-parties have been slow in responding to the subpoenas, but the parties have been working with the non-parties to obtain compliance without the need for court intervention and have, with E & D Towing as the exception, succeeded.

Plaintiff's depositions, one of an underwriter and one of a claims examiner, will be held in late May; one has already been scheduled and the other will be scheduled this week. The parties are also in the process of scheduling defendants' depositions, which will also require both claims and underwriting witnesses, and which are also noticed for late May.

It is possible, but not certain, that between five and ten additional non-party depositions will be required. The parties are in the process of determining the admissibility of the deposition and trial testimony in the underlying Cannon action; and whether, if that testimony is not admissible, the parties might stipulate to its admission. If the prior testimony will not be admissible, then the parties will have to depose numerous witnesses who testified at the trial of the Cannon action. The parties expect to make a determination as to whether these depositions will be necessary as soon as the party depositions are completed.

The parties are also hopeful that once party depositions are completed, settlement discussions will begin. We cannot predict, at this point, whether these discussions will resolve the case. But, that is the goal.

The Parties' Proposed Schedule

In order to complete the possibly necessary non-party depositions and to account for the non-party witnesses' summer vacations, the parties propose the following schedule:

Fact Discovery

- All fact discovery to be completed by September 30, 2008.
- Depositions to be completed by September 30, 2008.
- Any additional contemplated discovery to be completed by September 30, 2008.
- Requests to Admit to be served no later than October 30, 2008.

Expert Discovery

- Affirmative Reports by October 30, 2008.
- Rebuttal Reports by November 30, 2008.

- Expert Depositions by December 30, 2008.

Contemplated Motions

Plaintiff's and Defendants' summary judgment motions by January 31, 2009.

Settlement Discussions

Following discovery, the parties contemplate meeting for at least one hour to discuss settlement, such conference to be held not later than December 15, 2008.

Proposed CMO

Enclosed herewith is a CMO reflecting the above-proposed dates. If the Court agrees, we request that the CMO be "So Ordered." The parties will, of course, report their further progress when we appear in Court on June 4, 2008.

On behalf of all parties, we appreciate the Court's consideration of this matter.

Respectfully submitted,

Judith F. Goodman (JFG-7031)

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Enc.

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